IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5946 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NIRMALA APPA SWAMI MADRASI

Versus

STATE OF GUJARAT

Appearance:

MR RAJESH M AGRAWAL for Petitioner

MR AJ DESAI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 23/02/2000

ORAL JUDGEMENT

#. Heard learned advocate Ms.Banna Datta, for learned advocate Ms.K.D.Parmar on behalf of the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. That the respondent No : 2 - The Commissioner of Police, Surat City passed detention order dated 23-5-1999 against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') and executed the said order on the petitioner on 22-6-1999. That the said detention order is challenged in the present proceedings under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at running page 12 interalia indicate that the petitioner is involved in criminal cases registered vide C.R. No : 30109 / 99 dated 24-2-1999 at Chawk Bazaar police station and C.R. No : 30165 / 99 dated 11-4-1999 at Chawk Bazaar Police Station in respect to offence made punishable under Sections 3, 4, 6, and 7 of the Immoral Traffic (Prevention) Act, 1956. That both the matters are pending for further investigation. It further indicate that two witnesses on assurance of their anonymity have given statements dated 29-4-1999 and 30-4-1999 in respect to alleged prejudicial activities of the petitioner and have narrated incidents alleged to have been occurred on 14-3-1995 and prior to 10 days of the statement respectively. That on the basis of the said material, the respondent No.2 as the detaining authority has come to the conclusion that the petitioner is "Immoral Traffic Offender" within the meaning of Section 2(g) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing her anti social prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the petitioner was arrested on 24-2-1999 in respect to C.R. No : 30109 / 99 and released on bail on 1-3-1999, while in the second offence registered vide C.R. No : 30165 / 99, the petitioner was arrested on 11-4-1999 and released on bail on 15-4-1999. Thus, on the date of passing of the impugned order, the petitioner was on bail. That the respondent No : 2 has verified the statement of anonymous witnesses on 20th may, 1999. That the grounds of detention don't disclose the fact that before passing the detention order, whether the detaining authority has considered the aspect of claiming of cancellation of bail granted to the petitioner in cases registered against her. That non consideration of the said remedy amounts

to non application of mind which has vitiated the subjective satisfaction and has rendered the impugned order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that nowhere from the grounds of detention it has been mentioned, from which a reasonable inference could be drawn that the detaining authority had considered the aspect of claiming cancellation of bail granted to the petitioner in cases registered against her before passing the detention order. In view of the same, the detention order could hardly be sustained.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 23-5-99 passed by respondent No. 2 - The Police Commissioner, Surat which could be executed on the petitioner on 22-6-1999 is hereby quashed and set aside. The petitioner - NIRMALA APPA SWAMI MADRASI is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 23-2-2000 [A.K.Trivedi, J.]

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